

IN THE  
**Supreme Court of the United States**

Supreme Court, U. S.  
**FILED**  
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October Term, 1979  
No. 79-868

ADOLPH COORS COMPANY, a corporation,

*Petitioner,*

vs.

R.E. SPRIGGS CO., INC., a California corporation, and  
PHOEBE SPRIGGS, Successor-in-interest to the Estate  
of Ralph E. Spriggs, Deceased,

*Respondents.*

**PETITIONER'S REPLY BRIEF.**

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At pages 2 and 3 of respondents' brief in opposition, the argument is made that the petitioner has not timely raised the denial of due process and that both of the California appellate courts had not passed on this issue. Both statements are erroneous.

It was not until the California Court of Appeal filed its opinion that the issue of due process was squarely presented. The following statement from that opinion was the first notice that petitioner Coors had that it would be denied a trial on the issue of its liability to Spriggs:

"The judgment is reversed with directions to make findings on the issue of liability consistent with this opinion and to try the issue of damages."

(App. 112.)

Petitioner promptly raised this due process issue in the Court of Appeal with its petition for rehearing. (App. 113.) When that was denied, the due process issue was presented to the California Supreme Court by Coors' petition for a hearing in that court. (App. 127.) That court denied Coors a hearing. (App. 143.)

The case had been tried in the Los Angeles County Superior Court on the issue as to whether Coors' territorial limitations were a per se violation of the California antitrust statute known as the Cartwright Act. The trial court followed the decision of the same California Court of Appeal, albeit a different division of that court, in *La Fortune v. Ebie*, 26 Cal. App. 3d 72, 102 Cal. Rptr. 588 (1972), and refused to follow *Schwinn*. In doing so, the trial court rejected the doctrine of collateral estoppel in the *FTC* and *Copper Liquor* cases. (App. 77-79.) Thus the trial court refused to impose liability without trial by an offensive application of collateral estoppel. That ruling involved the issue of due process even if that label was not expressly used. The due process issue was within the clear intendment of Coors' appellate contentions that it would be unjust to apply collateral estoppel when *Schwinn* had been overruled by *Sylvania*, when the Fifth and Tenth Circuits in *Del Rio* and *A & S* had found in Coors' favor and refused to apply collateral estoppel to their own decisions in *Copper Liquor* and *FTC*, and where the issues were not identical. *See, e.g., Braniff Airways v. Nebraska State Board*, 347 U.S. 590, 598-99 (1954) ("Though inexplicit, we consider the due process issue within the clear intendment of such contention and hold such issue sufficiently presented."). These contentions were decided in Coors' favor in the trial court and raised at the earliest opportunity on appeal—during the pendency of which

*Sylvania* and *Del Rio* were decided. Petition 7-9, App. 77-79, 87, 91-94, 96-97, 113-120, 126-142.

Under the circumstances, the selective, offensive and conclusive application of collateral estoppel by the California Court of Appeal was an unfair surprise and Coors' first explicit presentation of federal questions in its petition for rehearing was timely. *See, e.g., Cole v. Arkansas*, 333 U.S. 196, 200-02 (1948); *Great Northern Railway Co. v. Sunburst Oil & Refining Co.*, 287 U.S. 358, 367 (1932). *See also, Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 330-31 & nn. 14 & 15 (1979) (Professor Currie's example of unfairness where, as here, offensive estoppel is based on inconsistent judgments).

There is nothing in this Court's opinion in *Parklane* which upholds the imposition of liability without a trial. All that decision decided was that the trial court should consider, under the particular circumstances of the individual case, whether collateral estoppel should or should not be applied offensively. If the present petition is not granted, Coors will be denied the benefit of that rule because the California appellate courts in this case have imposed liability on Coors without a trial.

Respectfully submitted,

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